

LAW OFFICES OF MICHAEL D. Kwasigroch
MICHAEL D. Kwasigroch Esq. Bar No. 134227
1975 Royal Ave #4 Simi Valley CA 93065
Simi Valley, California 93065
(805) 522-1800

Attorney for ULTRAMAN USA, INC.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UM CORPORATION, A JAPANESE
CORPORATION, PLAINTIFF
V
TSUBURAYA PRODUCTIONS CO.,
LTD., A JAPANESE
CORPORATION, DEFENDANT

TSUBURAYA PRODUCTIONS CO.,
LTD., A JAPANESE
CORPORATION, Counterclaimant,
Vs.
UM CORPORATION, A JAPANESE
CORPORATION, ULTRAMAN USA
INC., A CALIFORNIA
CORPORATION; SOMPOTE
SAENGDUENCHAI, A THAI
INDIVIDUAL; GOLDEN MEDIA
GROUP INC., A CALIFORNIA
CORPORATION; TIGA
ENTERTAINMENT COMPANY
LTD., A HONG KONG
CORPORATION; AND DOES 1-10

Case no. 2:15-cv-03764-AB-AJW
ANSWER OF ULTRAMAN USA
INC. TO COUNTERCLAIM OF
TSUBURAYA PRODUCTIONS CO.,
LTD

DEMAND FOR JURY TRIAL

Assigned to Hon. Andre Birrote, Jr.
Trial Date: None

Comes now counter defendant Ultraman USA Inc. and responds to the
counterclaim against it of TSUBURAYA PRODUCTIONS CO., LTD, as follows:

1 The following responses are numbered consecutively and concurrently with
2 the numbered paragraphs of the counterclaim against Ultraman USA Inc. and
3 said paragraphs are responded to as follows:

4 This responding Counter defendant Ultraman USA Inc. admits the following
5 numbered paragraphs of the counterclaim: 7, 8, 13, 14, 15.

6 This responding counter defendant, Ultraman USA Inc., has no information or
7 belief upon which to admit or deny the allegations of the following numbered
8 paragraphs of the counter claim and so on that basis denies the following
9 paragraphs: 1, 2, 3, 4, 5, 6, 9, 10, 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
10 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 44, 45, 46, 47, 51, 52,
11 53, 54.

12 This responding counter defendant Ultraman USA Inc. denies the following
13 numbered paragraphs of the counter claim: 12, 42, 43, 48, 49, 50.

14 The following affirmative defenses all relate to the counterclaim by
15 TSUBURAYA PRODUCTIONS CO., LTD., against Ultraman USA Inc. and are
16 submitted for that purpose:

17 First affirmative defense: Counterclaimant failed to state a claim upon which
18 relief can be granted.

19 Second affirmative defense: Counterclaimant has no valid, enforceable or
20 protectable rights or interest in some or all of the alleged copyrights or other
21 matters asserted.

22 Third affirmative defense: The counterclaims are barred in whole or in part by
23 the fact the claims are based on potentially fraudulent documents and/or
24 documents that were procured potentially by fraud.

25 Fourth affirmative defense: Counterclaimant's claims are barred in whole or in
26 part by their own unclean hands.

27 Fifth affirmative defense: Counterclaimant's claims are barred in whole or in
28 part by virtue of independent and separate rights held by Ultraman USA Inc.

1 Sixth affirmative defense: Counterclaimant's claims are barred in whole or in
2 part by potential lack of standing.

3 Seventh affirmative defense: Counterclaimant's claims are barred in whole or
4 in part by applicable statutes of limitations and the doctrine of latches.

5 Eighth affirmative defense: Counterclaimant's claims are barred in whole or in
6 part by the doctrines of waiver, estoppel, acquiescence and abandonment.

7 Ninth affirmative defense: any reliance by Counterclaimant on state law or
8 state law claims are preempted in whole or in part by the copyright act and the
9 independent rights of Ultraman USA Inc.

10 Tenth affirmative defense: Counterclaimant's claims are barred in whole or in
11 part by the doctrines of res judicata and collateral estoppel, otherwise known as
12 claim precluding and issue preclusion.

13 Eleventh affirmative defense: Counterclaimant's claims are barred because
14 the contract and or written documents upon which Counterclaimant asserts its
15 rights and seeks relief has been terminated and/or is otherwise invalid under
16 applicable law, either domestic or international, as found applicable by this court.

17 Twelfth affirmative defense: Counterclaimant has failed to mitigate its
18 damages, if any.

19 Thirteenth affirmative defense: Counterclaimant's damages, if any, were not
20 caused by Ultraman USA Inc., and are otherwise not attributable to the acts or
21 omissions of Ultraman USA Inc.

22 Fourteenth affirmative defense: The counterclaims are barred in whole or in
23 part by Counterclaimant's failure to apply to register the copyright regarding
24 some or all of the allegedly infringed works with the United States copyright
25 office, or other applicable and similar agencies domestically or international.

26 Fifteenth affirmative defense: The claims, including without limitations, claims
27 based upon alleged extraterritorial acts that occurred outside the United States,
28 are barred in whole or in part by lack of subject matter jurisdiction.

1 Sixteenth affirmative defense: The claims are barred in whole or in part by the
2 doctrine of illegality and the fact that the Counterclaimant's actions violate
3 applicable law.

4 Seventeenth affirmative defense: The claims are barred, in whole or in part,
5 by the freedom of speech protected by the First Amendment to the Constitution
6 of the United States.

7 Eighteenth affirmative defense: Any request for punitive and/or enhanced
8 damages are barred in whole or in part or both because all of the alleged acts
9 were taken in good faith and because the counterclaims failed to plead facts
10 showing an entitlement to an award of punitive and/or enhanced damages.

11 Nineteenth affirmative defense: the counterclaims against Ultraman USA Inc.
12 violate applicable law in the state of California which bars unfair competition and
13 the acts of Ultraman USA Inc. have been in the course and scope of pursuing
14 their rights to engage in competitive business in the state of California.

15 Twentieth affirmative defense: All of the actions of Ultraman USA Inc. and its
16 agents and representatives have been based upon representations, promises, or
17 contracts provided to them by other individuals or entities representing to have
18 rights to transfer and/or license Ultraman or Ultraman related products. Ultraman
19 USA Inc. has acted solely upon the representations and promises and
20 documentation provided to them, and fully in good faith believing all such
21 representations and documents were true, correct, accurate, and gave to
22 Ultraman USA Inc. the right to distribute certain figurines of the ULTRAMAN type
23 or depiction, and more.

24 Wherefore Ultraman USA Inc. request that the court make the following
25 judgment and orders:

26 1. That Counterclaimants take nothing by way of their counterclaims.
27
28

2. That the court declare the rights and duties of the parties in the various Ultraman rights, including the distribution of toys, figurines, or other patented or copyrighted materials.
3. That the court find Ultraman USA Inc. does hold the right to distribute figurines pursuant to its various contracts with various alleged distributors and/or representatives.
4. For reasonable attorneys fees based upon any applicable basis, pursuant to proof, whether it be contract, statute, case law, or rule.
5. For costs of suit incurred herein.
6. For such other and further relief as the court deems just and proper.

Dated 11-4-15

Respectfully Submitted,



MICHAEL D. KWASIGROCH Esq.
Attorney for ULTRAMAN USA Inc.